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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

REPLY

MCI TELECOMMUNICATIONS CORPORATION

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REPLY

MCI Telecommunications Corporation (MCI) hereby replies to the oppositions to its Petition for Reconsideration and Clarification (Petition) filed in this proceeding as discussed below.

I. UNIVERSAL SERVICE FUND MECHANISM

As an initial matter, in the comments round of this proceeding, MCI advocated, and continues to believe, that the best approach for ensuring sufficient universal service support is a "unitary approach." In other words, the total amount of support needed to ensure universal service should be determined based on a forward-looking economic cost model, and carriers should contribute to the fund based on their total interstate and intrastate revenues net, of payments to other carriers. The Commission rejected this approach, in part, because of its desire to avoid a court battle over whether it could assess intrastate revenues. It now appears that the Commission will not avoid a court battle. A number of parties challenge the Commission's authority to fund only 25% of the support amount as determined by the model and the local exchange carriers (LECs) continue to challenge any Commission action that does not ensure the continuation of their current revenue. The best answer to these concerns and the best policy approach under the Act, is adoption of MCI's unitary approach to universal service.

If, nevertheless, the Commission does not adopt a unitary approach, it must adopt the modifications and clarifications proposed by MCI to ensure that universal service support is predictable and explicit and to ensure that its universal service mechanism is not frustrated by "gaming" in the states. Thus, as demonstrated in MCI's Petition, the Commission should select a single cost model that will be used to set federal support for <u>all</u> states or, if the Commission continues to allow states to submit their own cost models, it should impose requirements and parameters on those models sufficient to overcome the incentive to choose a high cost model.

The Commission must reject GTE's argument that a "one-size fits all" cost study for determining universal service support requirements should not be adopted and, instead, that company specific engineering studies should be used to determine support[1] as nothing more than a challenge to the Commission's use of a forward-looking cost model and methodology. The Commission's reasons for adopting a forward-looking cost model approach remain compelling and there is no reason for the Commission to depart from its decision now.

The Commission must make clear in the Universal Service Order that incumbent local exchange carriers (ILECs) must eliminate all implicit universal service subsidies in interstate access charges and, at a minimum, that ILECs must reduce interstate access charges by an amount equal to the explicit federal universal service support received. The Commission also must reject the arguments of Bell Atlantic and GTE on this issue. Specifically, Bell Atlantic argues that the

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[1] GTE Opposition at 5-6.

Commission should allocate a portion of the federal high-cost fund to support local rates[2] and GTE argues in support of a five year transition period before federal universal service receipts are used only to offset the interstate revenue requirement through access charge reductions.[3] As demonstrated on the record, LECs currently receive implicit federal universal service support through artificially high interstate access charges. Therefore, once this support is explicit through the universal service fund, the implicit subsidies must be eliminated. Otherwise, ILECs would be recovering universal service support twice-- once through access charges and again through the universal service fund.

The Commission must clarify that states cannot include carriers' interstate and international revenues in determining assessments for state high cost and low income funds since contributions to the federal fund will not be based on intrastate revenues and dismiss US West's arguments to the contrary. According to US West, the states have exclusive authority over intrastate universal service support and funding mechanisms, including the authority to decide to assess intrastate, interstate and international revenues of intrastate carriers.[4] Section 254(f), however, clearly limits the states' authority to establish universal service programs by providing that a "State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service...". Accordingly, states should not be allowed to frustrate the Commission's program of dual state and federal responsibility for funding universal service by shifting the burden of funding for state programs onto interstate carriers.

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[2] Bell Atlantic Opposition at 3.

[3] GTE Opposition at 2.

[4] US West Opposition at 4.

II. LIFELINE ELIGIBILITY AND CERTIFICATION

The Commission must adopt the eligibility and certification requirements for the Lifeline and Linkup programs proposed by MCI and reject the arguments to the contrary. For example, USTA argues that a national eligibility standard is not necessary because there is no evidence that state procedures are ineffective. While it may be true that existing state procedures are effective, the fact is that not all states have procedures in place and, therefore, the Commission has established a federal eligibility requirement. Now that it has been established, it should be the minimum requirement for all consumers in all states.

Similarly, now that the Commission has established a minimum certification requirement for states that do not provide state matching support, there is no justification for allowing states that provide state matching support to choose to have no certification. The United Catholic Conference et. al. argues that MCI's call for effective certification somehow equates low-income consumers with fraudulent behavior. On the contrary, with no effective certification, consumers who are not low-income will be in a position to commit fraud by claiming the subsidized rate with impunity. This will lead to higher costs to carriers-- and higher rates to customers-- to the detriment of all, including Lifeline customers.

The arguments against MCI's certification proposal also are without merit. MCI demonstrated that instead of self-certification, consumers requesting Lifeline service should demonstrate to the LEC that they are eligible for one of the federal benefit programs listed by the Commission. This proposal completely eliminates the Commission's justification for allowing states to choose no certification-- namely, that the cost of certification to the state may be greater than the cost of potential fraud-- because there would be no cost to the state. In addition, contrary to the arguments of some LECs, it imposes no greater burden on LECs than the Commission's requirement that LECs obtain certified statements from Lifeline customers in states that do not provide state matching support.

III. CONTRACT CUSTOMERS

The Commission should deny the requests of NYCHA, MasterCard and VISA (NYCHA), supporting the Petitions for Reconsideration of the Ad Hoc Telecommunications Users Committee (Ad Hoc) and the American Petroleum Institute (API). The latter ask the Commission to reconsider its decision to allow carriers to adjust long-term individually negotiated service arrangements to include price increases to cover the imposition of universal service charges on carriers. As determined by the Commission, the new universal service requirements create "an expense or cost of doing business that was not anticipated at the time contracts were signed." [5] This means that costs over which affected carriers have no control were unknown at the time they entered into the long term service arrangements at issue. Thus, the Commission has found that carriers must be allowed, as a matter of right,[6] to make changes to existing contracts for service in

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[5] Order at para. 851.

[6] It is important to recognize that carriers must be afforded this right to recover unforseen costs without need to litigate that right under the "substantial cause doctrine." See, RCA American Communications, Inc., 86 FCC2d 1197 (1981) Thereunder, MCI and other affected carriers, assuming the presence of a tariffing environment, have the right to modify long-term contract prices based upon the imposition of costs over which they have no control and not run afoul of the "just and reasonable" standard embodied in Section 201(b) of the Act. Here, the Commission properly has chosen to relieve carriers-- and its own processes-- of the need to justify on an individual contract basis price changes that result from universal service costs. Presumably, this important carrier right will survive the act of tariffing, should carriers be deprived of that right in contemporaneous Commission proceedings.

order to adjust for this new cost of doing business.

In addition, if carriers are unable to pass universal service costs through to contract customers, these costs necessarily will have to be absorbed by other customers, such as residential customers, which do not receive service pursuant to long term service arrangements. Since all customers benefit from universal service, the cost of maintaining universal service should be borne by all. It would not be equitable for the Commission to adopt an approach that effectively resulted in smaller customers subsidizing larger customers.

Finally, the argument of NYCHA, Ad Hoc and API-- that, in the absence of a Commission imposed carrier flow-through obligation for access charge reductions, contract customers will be subject to rate increases-- is without merit. Contract customers are in the most competitive segment of the interexchange market and have consistently been able to demand contract revisions or renewals that take advantage of any cost decreases experienced by carriers. There is no evidence that contract customers will be disadvantaged in any way by the rate restructuring that will occur as a result of the Commission's action in the Universal Service Order, and thus no basis to impose a specific flow-through requirement on this most competitive segment of the market.

IV. CONCLUSION

Based on the foregoing, MCI respectfully requests that the Commission reconsider and clarify its Order as requested herein and in MCI's Petition.

Respectfully submitted,

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